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UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

REX MICHAEL KERN, Jr.,

Defendant.

Case No.: 4:22-cr-06038-MKD-1

United States' Ex Parte Motion To
File Overlength Motion to Dismiss
Defendant's Pro Se Motion to
Vacate, Set Aside, or Correct
Sentence by a Person in Federal
Custody Pursuant to 28 U.S.C.
§ 2255

Plaintiff United States of America, by and through Stephanie Van Marter, Acting United States Attorney for the Eastern District of Washington, and David M. Herzog, Assistant United States Attorney, moves for an Order permitting the United States to submit an overlength brief responding to Defendant Rex Michael Kern, Jr., ("Defendant")'s Pro Se Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody Pursuant to 28 U.S.C. § 2255. See ECF No. 125.

Pursuant to LCivR 7(f), "dispositive motions . . . shall not exceed 20 pages," and nondispositive motions shall not exceed 10 pages. LCivR 7(b)(3) indicates "[a] 'dispositive motion' is a motion requesting summary judgment, judgment on the pleadings, dismissal, remand, or permanent injunctive relief. A 'nondispositive motion' is a motion seeking any other relief." Page limits "may only be exceeded by obtaining prior approval of the Court. A motion to exceed page limits must demonstrate good cause and recite the opposing party's position." LCivR 7(f)(5).

1 The United States is filing *ex parte* because it is not in a position to
2 communicate with Defendant or obtain his position; Defendant is proceeding pro
3 se and is in custody at Terre Haute FCI.

4 Understandably, as a non-lawyer litigant proceeding pro se, Defendant's
5 brief makes assertions without what could fairly be called traditional arguments,
6 relevant transcripts, citations to the record, or on-point case authority. He also
7 raises several potential claims for habeas corpus, each of which requires a fulsome
8 analysis of whether the claim has been waived, whether it is supported by the
9 record, and *then* whether Defendant has met his burden of establishing
10 constitutionally ineffective representation and prejudice under *Strickland v.*
11 *Washington*, 466 U.S. 668 (1984).

12 In order to respond to Defendant's motion in a comprehensive way –
13 particularly where the United States is seeking outright dismissal of Defendant's
14 claims – the United States has had to research and analyze not only a fairly
15 complex procedural landscape, but the district court record, several filings from
16 Defendant, and a significant amount of caselaw. As always, the United States'
17 goal is to give the Court in one document all of the information the Court needs to
18 make a decision; part of the reason for the request for overlength is that the United
19 States has block-quoted directly into its motion significant relevant portions of the
20 record, for ease of efficient review. In short, Defendant's claims require a detailed
21 response, which cannot meaningfully be accomplished in 20 pages.

22 The United States' brief is 27 pages long. The United States respectfully
23 submits that good cause exists to grant this motion for overlength filing.

24 Dated: August 8, 2025

Stephanie Van Marter
Acting United States Attorney

26 s/ David M. Herzog
27 David M. Herzog
28 Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to following, and/or I hereby certify that my office has mailed by United States Postal Service the document to the following non-CM/ECF participant:

REX MICHAEL KERN
Register Number: 25211-510
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s/David M. Herzog
David M. Herzog
Assistant United States Attorney